



Senate

General Assembly

File No. 230

January Session, 2001

Substitute Senate Bill No. 1327

Senate, April 11, 2001

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PREQUALIFICATION OF CONTRACTORS DOING BUSINESS WITH THE STATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4b-91 of the general statutes is amended by
2 adding subsection (c) as follows:

3 (NEW) (c) (1) (A) Every bid or offer submitted for a contract subject
4 to this chapter of one million dollars or more and every bid or offer
5 submitted for a municipal contract of one million dollars or more using
6 state funds shall be accompanied by a copy of a prequalification
7 statement issued by the Commissioner of Consumer Protection
8 showing that the bidder or offeror has the classification and capacity
9 rating to perform the work required under such contract. The bid or
10 offer shall also be accompanied by an update statement in such form
11 for update statement as the commissioner prescribes. A blank copy of
12 such form for update statement shall be furnished by the awarding
13 authority to every person or business entity requesting a copy. The

14 form for update statement shall provide space for information
15 regarding all projects completed by the bidder or offeror since the date
16 of issuance of the bidder's or offeror's prequalification statement, all
17 projects that the bidder or offeror currently has under contract
18 including the percentage of work on such projects not completed, the
19 names and qualifications of the personnel who will have supervisory
20 responsibility for the performance of the contract, any significant
21 changes in the bidder's or offeror's financial position or business
22 organization since the date of certification of eligibility, and such other
23 relevant information as the commissioner shall prescribe. Any bid or
24 offer submitted without the prequalification statement and update
25 statement shall be invalid. A bid or offer submitted for a municipal
26 contract not using state funds may be accompanied by a copy of such
27 prequalification statement and update statement.

28 (B) The bidder or offeror shall certify under penalty of perjury at the
29 conclusion of the bidding process that there have been no substantial
30 changes in the bidder's or offeror's financial position or business
31 organization other than those changes noted within the update
32 statement since the bidder's or offeror's most recent prequalification
33 statement and that the bid is in all respects bona fide, fair and made
34 without collusion or fraud with any natural person, joint venture,
35 partnership, corporation or other business or legal entity that sells
36 materials, equipment or supplies used in or for, or engages in the
37 performance of, the same or similar construction, reconstruction,
38 installation, demolition, maintenance or repair work or any part
39 thereof.

40 (2) The commissioner shall accept applications for a prequalification
41 statement in such form as the commissioner prescribes, signed by the
42 applicant under penalty of perjury, supplying information concerning
43 the applicant's form of organization, its principals and key personnel;
44 the applicant's experience on public and private construction projects
45 over the past five years or on the twenty projects most recently

46 completed; all legal or administrative proceedings currently pending
47 against the applicant or concluded adversely to the applicant within
48 the past five years that relate to the procurement or performance of
49 any public or private construction contract; and such other information
50 as the commissioner deems relevant to the determination of the
51 applicant's qualifications. The application shall include a statement of
52 financial condition prepared by a certified public accountant that shall
53 contain information, including, but not limited to, the applicant's
54 current assets and liabilities, plant and equipment; bank and credit
55 references, bonding company and maximum bonding capacity; and
56 such other information as the commissioner deems relevant to an
57 evaluation of the applicant's financial capacity. The information
58 contained in the application shall be current at the time of filing and
59 the statement of financial condition shall pertain to the applicant's
60 most recent, completed fiscal year. Any material false statement in the
61 application or update statement may, in the discretion of the awarding
62 authority, result in termination of any contract awarded the bidder or
63 offeror by the awarding authority, and shall constitute cause for
64 disqualification of the bidder or offeror from future public work as
65 provided in section 31-57c. Applications and evaluations shall be
66 exempt from disclosure as public records under subdivisions (5) and
67 (7) of subsection (b) of section 1-210. If the applicant is a joint venture,
68 all information required by this section shall be provided for each
69 venturer.

70 (3) The commissioner shall evaluate every applicant for a
71 prequalification statement on the basis of the application and on
72 relevant past performance according to procedures and criteria that
73 the commissioner adopts by regulations, in accordance with the
74 provisions of chapter 54. Such criteria shall include the following: (A)
75 The record of the applicant's performance including, if available,
76 written evaluations of the applicant's performance on public and
77 private construction over the past five years; (B) the applicant's
78 experience on construction projects of various size and type; (C) the

79 experience and qualifications of supervisory personnel; (D) the
80 maximum amount of work the applicant is capable of undertaking as
81 demonstrated by the applicant's financial condition, bonding capacity,
82 size of previous projects, and present and anticipated work
83 commitments; and (E) any other relevant criteria that the
84 commissioner may prescribe. As feasible, the commissioner shall
85 assign to criteria evaluated separate designated numerical values and
86 weights and shall assign to the applicant an overall numerical rating
87 on the basis of all such criteria. The applicant shall indicate among
88 categories established by the commissioner the classes of work and
89 aggregate amount of work for which the prequalification statement is
90 sought. The commissioner shall issue a prequalification statement as
91 warranted by the evaluation that shall be effective for one year from
92 the date issued, showing the classes of work and aggregate amount of
93 work on which the applicant is eligible to bid.

94 (4) The commissioner shall promptly notify an applicant of the
95 preliminary determination of the issuance, conditions or denial of the
96 prequalification statement and the reasons supporting such
97 determination. An applicant aggrieved by the commissioner's
98 preliminary determination may request, not later than five business
99 days after the receipt of notice of a preliminary determination, copies
100 of the information upon which the commissioner relied in making the
101 preliminary determination. Not later than ten business days after the
102 receipt of the notice, the applicant may submit further information to
103 the commissioner with a request for reconsideration. The
104 commissioner shall issue a final determination regarding an
105 application for prequalification not later than thirty business days from
106 the date of the preliminary determination, unless the applicant and the
107 commissioner agree to extend the thirty day period. Any applicant
108 aggrieved by the final determination of the commissioner may appeal
109 to the Superior Court in accordance with the provisions of section 4-
110 183.

111 (5) The commissioner may revoke a contractor's prequalification
112 statement upon receipt of additional information regarding a
113 contractor's qualifications. Upon such revocation, the commissioner
114 shall follow the procedures established by this section.

115 (6) In determining the lowest responsible and qualified general
116 bidder as required in this section, the awarding authority shall
117 consider the information submitted by the bidder or offeror in the
118 update statement. If the awarding authority determines that the low
119 bidder or offeror is not responsible and eligible, the awarding
120 authority shall reject the bidder or offeror and evaluate the next low
121 bidder in accordance with this section. The awarding authority shall
122 give notice of such action to the commissioner. In determining the
123 lowest responsible and qualified general bidder, the awarding
124 authority shall consider the information submitted by the bidders or
125 offerors on the update statement.

126 (7) The commissioner shall develop a standard contractor
127 evaluation form that shall be completed by every public agency, upon
128 completion of a building project under its control and submit such
129 form to the commissioner for the contractor's prequalification file. An
130 official from the public agency, or the architect or engineer responsible
131 for the oversight of the building construction contract, shall certify that
132 the information contained on the contractor evaluation form
133 represents, to the best of the official's, or architect's or engineer's
134 knowledge, a true analysis of the contractor's performance record on
135 such contract. The public agency shall mail a copy of the completed
136 contractor evaluation form to the contractor and the contractor may,
137 not later than thirty days after the postmark on the envelope of the
138 mailed form, submit a written response to the commissioner disputing
139 any information contained in the evaluation form. The commissioner
140 shall attach any such response to the evaluation form for inclusion in
141 the contractor's prequalification file.

142 (8) The provisions of this section shall not apply to sub-bidders or
143 sub-offerors.

144 (9) The commissioner may adopt regulations, in accordance with the
145 provisions of chapter 54, to carry out the provisions of this subsection.

146 (10) For the purpose of this section, "essential information in regard
147 to such qualifications" as used in section 4b-92, as amended by this act,
148 means the prequalification statement and update statement provided
149 for by this subsection.

150 Sec. 2. Section 4b-92 of the general statutes is repealed and the
151 following is substituted in lieu thereof:

152 As used in this chapter and except as otherwise provided, the words
153 "lowest responsible and qualified bidder" shall mean the bidder whose
154 bid is the lowest of those bidders possessing the skill, ability and
155 integrity necessary to faithful performance of the work based on
156 objective criteria considering past performance and financial
157 responsibility. Essential information in regard to such qualifications
158 shall be submitted with the bid. [in such form as the awarding
159 authority may require by specification in the bid documents and on the
160 bid form.] Every general bid shall be accompanied by a bid bond or a
161 certified check in an amount which shall be ten per cent of the bid,
162 provided no such bid bond or certified check shall be required in
163 relation to any general bid in which the total estimated cost of labor
164 and materials under the contract with respect to which such general
165 bid is submitted is less than fifty thousand dollars. Failure to execute a
166 contract awarded as specified and bid shall result in the forfeiture of
167 such bid bond or certified check. In considering past performance the
168 awarding authority shall evaluate the skill, ability and integrity of
169 bidders in terms of the bidders' fulfillment of contract obligations and
170 of the bidders' experience or lack of experience with projects of the size
171 of the project for which the bids are submitted. For the purposes of this
172 section, "essential information in regard to such qualifications" means a

173 prequalification statement and an update statement provided for in
174 subsection (c) of section 4b-91, as amended by this act.

Statement of Legislative Commissioners:

Section 2 was added to reflect a reference to the general statutes. In section 1 (c) (1) (A) "update form" was changed to "form for update statement" for clarity. In section 1 (c) (6) "eligible bidder or offeror" and "most advantageous bid" were changed to "responsible and qualified general bidder" for consistency with the general statutes.

GL **JOINT FAVORABLE SUBST.**

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Cost, Indeterminate Impact

Affected Agencies: Department of Consumer Protection, Various State Agencies

Municipal Impact: Indeterminate Impact

Explanation**State Impact:**

The bill requires the Department of Consumer Protection (DCP) to prequalify contractors eligible to bid on public works or municipal contracts of \$1 million or more using state funds.

Department of Consumer Protection

Specifically, DCP will have to: 1) develop criteria to evaluate contractors; 2) prepare prequalification and update statements; 3) develop a form public agencies can use to evaluate contractors upon completion of a building project; and 4) establish an appeal procedure for applicants denied prequalification.

It is anticipated the agency will require three additional staff with associated personal services and associated other expenses costs of \$157,825 in FY 02 and \$150,325 in FY 03.

	FY 02	FY 03
Principal Attorney (AR-31) - <i>directs program, responsible for appeals, develops forms and procedures</i>	\$65,326	\$65,326
Contract Specialist (AR-26) - <i>assists in development of forms and procedures, verifies data supplied by contractors</i>	\$54,241	\$54,241
Data Entry Operator 2 (CL-13)	\$28,258	\$28,258
Equipment (3 desks, 3 computers, phones, printer)	\$7,500	\$1,500
Other Expenses	\$2,500	\$1,000
TOTAL	\$157,825	\$150,325

Various State Agencies

The extent to which the prequalification process will impact contracts awarded by state agencies for public works projects is unknown. Thus, there is an indeterminate fiscal impact.

The bill requires the agency awarding a contract to give a copy of the update statement to everyone who requests it, and requires the agency to complete a contractor evaluation form upon the conclusion of a building project. It is anticipated these provisions will result in a minimal workload increase, which can be handled within the agency's normal budgetary resources.

Municipal Impact:

The extent to which the prequalification process will impact contracts awarded by municipalities for public works projects is

unknown. Thus, there is an indeterminate fiscal impact.

The bill requires the municipal agency awarding a contract to give a copy of the update statement to everyone who requests it, and requires the agency to complete a contractor evaluation form to be completed upon the conclusion of a building project. It is anticipated these provisions will result in a minimal workload increase, which can be handled within normal budgetary resources.

OLR Bill Analysis

sSB 1327

***AN ACT CONCERNING PREQUALIFICATION OF CONTRACTORS
DOING BUSINESS WITH THE STATE.*****SUMMARY:**

This bill requires the Department of Consumer Protection (DCP) to approve in advance, or prequalify, contractors eligible to bid on public works or municipal contracts of \$1 million or more using state funds.

It requires DCP to (1) develop criteria to evaluate the contractors and specifies the information DCP must consider; (2) prepare prequalification and update statements that each contractor must submit with his bid, and (3) develop a form that public agencies can use to evaluate contractors upon completion of a building project.

It requires contractors to submit their prequalification statement and update form with their bids and specifies the information that each must contain. Contract-awarding agencies must consider the update information when awarding a contract. Bids submitted without prequalification and update statements cannot be considered.

The bill requires contractors to verify, under penalty of perjury, that the information in their prequalification application and update forms is true. The bill specifies that any materially false information in the forms may result in contract termination and is grounds for disqualification from future public works contracts. The bill authorizes the consumer protection commissioner to revoke a contractor's prequalification after receiving additional information about his qualifications.

At the conclusion of the bidding process, a bidder must certify, under penalty of perjury, that there have been no substantial changes in his financial position or business organization since his most recent prequalification statement, other than those noted in the update. He also must certify, under penalty of perjury, that his bid is bona fide,

and made without fraud or collusion with any person or business engaged in similar construction work, or in selling construction material, equipment, or supplies.

The bill creates an appeal procedure for contractors denied prequalification, specifies that sub-bidders do not have to prequalify, and allows contractors to submit prequalification and update statements on municipal bids in which no state funds are used.

The bill exempts the contractor's prequalification application and DCP's contractor evaluation from disclosure under the Freedom of Information Act.

Finally, the bill permits DCP to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2001

EVALUATION OF CONTRACTORS

The commissioner must adopt regulations establishing criteria to evaluate applicants for prequalification, based on the application and the applicant's relevant past performance. The criteria must include:

1. the applicant's performance record, including any written evaluations of public and private jobs within the previous five years;
2. the applicant's prior experience on projects of various sizes and types;
3. the experience and qualification of supervisory personnel;
4. the maximum amount of work the applicant is capable of undertaking as demonstrated by his financial condition, bonding capacity, size of previous projects, and present and anticipated work commitments; and
5. other criteria the commissioner deems relevant.

If feasible, the commissioner must assign numerical values or weights

to each factor, and assign each applicant an overall numerical rating.

The bill requires the applicant to indicate, among categories established by DCP, the classes of work and aggregate amount of work for which he seeks prequalification.

Prequalification statements, which indicate the classes of work and aggregate amount of work for which the applicant is eligible to bid, are effective for one year from the date issued.

PREQUALIFICATION APPLICATION

The prequalification application must be in a form prescribed by the commissioner, and signed under penalty of perjury. It must include a financial statement, and information about the applicant's:

1. business organization, principals, and key personnel;
2. experience on public and private construction projects for either the past five years, or the 20 most recently completed projects;
3. legal or administrative proceedings pending or concluded adversely against the applicant within the past five years pertaining to procurement or performance on any public or private construction contract; and
4. other information DCP considers relevant.

Financial Statement

The prequalification application must include a current financial statement, prepared by a certified public accountant, pertaining to the applicant's most recent, completed fiscal year, and containing information concerning the applicant's:

1. current assets and liabilities, plant, and equipment;
2. bank and credit references;
3. bonding company and maximum bonding capacity; and

4. any other information DCP considers relevant.

If the applicant is a joint venture, each participant in the joint venture must provide the information.

The bill requires the prequalification statement to show that the bidder has the classification and capacity rating to perform the work required, but does not define those terms.

UPDATE STATEMENT

The agency awarding the contract must give a blank copy of the update form to everyone who requests it. The agency must consider the information contained in the update when determining the lowest responsible and qualified general bidder. The update must include:

1. information regarding all projects completed by the bidder since the issuance of the bidder's prequalification statement;
2. all projects the bidder currently has under contract, including the percentage of work not completed;
3. the names and qualifications of supervisory personnel working on the contract;
4. any significant changes in the bidder's financial position or business organization since he was prequalified; and
5. any other relevant information required by DCP.

APPEAL PROCEDURE

Applicants denied prequalification may request, no later than five business days after receiving notice of the denial, copies of the information on which the commissioner relied. The applicant has 10 business days in which to submit further information to DCP and request reconsideration. The commissioner must issue a final determination no later than 30 business days after the preliminary determination, unless both sides agree to an extension. An applicant

may appeal the commissioner's final decision to Superior Court.

CONTRACTOR EVALUATION FORM

The commissioner must develop a standard contractor evaluation form to be completed and certified by every public agency upon completion of a building project for the agency. The agency must send copies of the evaluation to DCP and the contractor. The contractor has 30 days to respond to the evaluation, and his response must be included in his qualification file.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 2